

B. James Fitzpatrick (SBN: 129056)
Laura L. Franklin (SBN: 282642)
FITZPATRICK & SWANSTON
555 S. Main Street
Salinas, CA 93901
Telephone: (831) 755-1311
Facsimile: (831) 755-1319

Larry W. Lee (SBN: 228175)
Max W. Gavron (SBN: 291697)
DIVERSITY LAW GROUP, P.C.
515 S. Figueroa Street, Suite 1250
Los Angeles, California 90071
Telephone: (213) 488-6555
Facsimile (213) 488-6554

Attorneys for Plaintiff,
OFELIA ORTEGA on behalf of herself
and all similarly aggrieved employees

SUPERIOR COURT OF CALIFORNIA

COUNTY OF MONTEREY

OFELIA ORTEGA, on behalf of herself
and all similarly aggrieved employees,

Plaintiff,

v.

SUNLIGHT BERRY FARMS, INC.; and
DOES 1 through 50, inclusive,

Defendants.

Case No. 20CV002558

**[PROPOSED] ORDER GRANTING
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT AND SETTING
A SETTLEMENT FAIRNESS HEARING**

Date: October 28, 2022

Time: 8:30 a.m.

Dept.: 14

Complaint Filed: September 24, 2020

FAC Filed: January 1, 2021

SAC Filed: January 6, 2022

1 Plaintiff Ofelia Ortega's ("Plaintiff") application for an Order Granting Preliminary
2 Approval of Class Action Settlement was filed with the Court on September 6, 2022, and a
3 hearing was held before this Court on October 28, 2022. Appearances for Plaintiff and
4 Defendants Sunlight Berry Farms, Inc. and Naturipe Berry Growers, Inc.'s (together,
5 "Defendants") were noted on the record.

6 The Court has considered the Stipulation of Settlement ("Settlement Agreement") and
7 all other papers filed in this action.

8 NOW THEREFORE, IT IS HEREBY ORDERED:

9 1. This Court grants preliminary approval of the Settlement Agreement between
10 Plaintiff and Defendants filed herewith. The Settlement Agreement appears to be fair,
11 adequate, and reasonable to the Settlement Class.

12 2. The Class Representative and Defendants (hereafter, "Settling Parties"), through
13 their counsel of record in the Litigation, have reached an agreement to settle all claims in the
14 Litigation on behalf of the Settlement Class (as defined below and in the Settlement
15 Agreement) as a whole.

16 3. The Court hereby approves the following Settlement Class for settlement
17 purposes:

18 All Sunlight Berry Farms, Inc's current and former non-exempt
19 employees in the State of California at any time between
20 September 24, 2016 through the date the Court enters preliminary
approval of the Class Action Settlement (the "Settlement Period").

21
22 Should for whatever reason the Settlement Agreement not become Final, the fact that
23 the Parties were willing to stipulate to certification of a class as part of the Settlement
24 Agreement shall have no bearing on, or be admissible in connection with, the Litigation.

25 4. The Court appoints and designates: (a) Plaintiff Ofelia Ortega as the Class
26 Representative and (b) B. James Fitzpatrick and Laura L. Franklin of Fitzpatrick & Swanston
27 and Larry W. Lee and Max W. Gavron of Diversity Law Group, P.C. as Class Counsel for the
28 Settlement Class. Class Counsel is authorized to act on behalf of the Settlement Class with

1 respect to all acts or consents required by, or which may be given, pursuant to the Settlement
2 Agreement, and such other acts reasonably necessary to finalize the Settlement Agreement and
3 its terms. Any Settlement Class Member may enter an appearance through his or her own
4 counsel at such Settlement Class Member's own expense. Any Settlement Class Member who
5 does not enter an appearance or appear on his or her own behalf will be represented by Class
6 Counsel.

7 5. The Court hereby approves the terms and conditions provided for in the
8 Settlement Agreement. The Court finds that on a preliminary basis the Settlement Agreement
9 falls within the range of reasonableness of a settlement, including the amount of the PAGA
10 penalties, and appears to be presumptively valid, subject only to any objections that may be
11 raised at the final fairness hearing and final approval by the Court. It appears to the Court on a
12 preliminary basis that the settlement is fair, adequate, and reasonable as to all potential
13 Settlement Class Members when balanced against the probable outcome of further litigation
14 relating to liability and damages issues. It also appears that investigation, research, and court
15 proceedings have been conducted so that counsel for the Settling Parties are able to reasonably
16 evaluate their respective positions. It appears to the Court that settlement at this time will
17 avoid substantial additional costs by all Settling Parties, as well as avoid the delay and risks
18 that would be presented by the further prosecution of the Litigation. It also appears that
19 settlement has been reached as a result of intensive, serious, and non-collusive arm's-length
20 negotiations.

21 6. A final fairness hearing on the question of whether the proposed Settlement
22 Agreement, the allocation of payments to Settlement Class Members, attorneys' fees and costs
23 to Class Counsel, the payment to the Settlement Administrator, the payment to the Labor and
24 Workforce Development Agency, and the Class Representative Enhancement Payment should
25 be finally approved as fair, reasonable, and adequate as to the members of the Settlement Class
26 is hereby set for _____ at _____ in this Court.

27 7. The Court hereby approves, as to form and content, the Notice of Proposed Class
28 Action Settlement ("Notice Packet") to be sent to Settlement Class Members, which is

1 attached as **Exhibit A** to the Settlement Agreement. The Court finds that distribution of the
2 Notice Packet to Settlement Class Members substantially in the manner and form set forth in
3 the Settlement Agreement and this Order meets the requirements of due process and shall
4 constitute due and sufficient notice to all parties entitled thereto.

5 8. The Court appoints and designates Phoenix Settlement Administrators as the
6 Settlement Administrator. The Court hereby directs the Settlement Administrator to provide
7 the approved Notice Packet to Settlement Class Members using the procedures set forth in the
8 Settlement Agreement.

9 9. Any Settlement Class Member may choose to opt out of and be excluded from
10 the settlement as provided in the Settlement Agreement and Notice Packet and by following
11 the instructions for requesting exclusion. Any person who timely and properly opts out of the
12 settlement will not be bound by the Settlement Agreement or have any right to object, appeal,
13 or comment thereon. Any request for exclusion must be in writing and signed by each such
14 Settlement Class Member opting out and must otherwise comply with the requirements
15 delineated in the Notice Packet. Settlement Class Members who have not requested exclusion
16 by submitting a valid and timely request by the deadline shall be bound by all determinations
17 of the Court, the Settlement Agreement, and Judgment.

18 10. Any Settlement Class Member may object to the Settlement Agreement or
19 express his or her views regarding the Settlement Agreement, and may present evidence and
20 file briefs or other papers that may be proper and relevant to the issues to be heard and
21 determined by the Court as provided in the Notice Packet.

22 11. Any Individual Settlement Award payments not cashed within one-hundred
23 eighty (180) days from the date of issuance of the check shall be entirely paid to the
24 Watsonville Law Center, after all payments for the Settlement Administrator's fees and
25 expenses, Plaintiff's Enhancement Payment, Class Counsel's attorneys' fees and costs, and
26 PAGA civil penalties to the LWDA have been fully paid. Watsonville Law Center is approved
27 as a *cy pres* recipient.

28 12. The Motion for Final Approval shall be filed by the Class Representative no

1 later than sixteen (16) court days before the Settlement Fairness Hearing.

2 13. The Court reserves the right to adjourn or continue the date of the Settlement
3 Fairness Hearing and all dates provided for in the Settlement Agreement without further notice
4 to the Class, and retains jurisdiction to consider all further applications arising out of or
5 connected with the Class Settlement Agreement.

6 IT IS SO ORDERED.

7
8 DATED: _____

9 HON. CARRIE M. PANETTA
10 SUPERIOR COURT OF CALIFORNIA
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28